

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ALPHONSE KNIGHT and OLIVE KNIGHT :

Plaintiffs, :

v. :

C.A. No.: 1:23-cv-11221

JOHN DOE CORPORATION and
TOYOTA MOTOR SALES, U.S.A., INC. :

Defendants. :

NOTICE OF REMOVAL

TO: The Chief Judge and Justices of the United States District Court for the District of Massachusetts

Toyota Motor Sales, U.S.A., Inc. (“Defendant” or “TMS”) hereby files this Notice of Removal of the captioned action from the Suffolk Superior Court, Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. In support of its Notice of Removal, the Defendant states as follows:

1. The underlying action is one over which the Court has jurisdiction under 28 U.S.C. § 1332 and which may be removed pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the parties and the amount in controversy is more likely than not to exceed \$75,000.
2. Plaintiffs filed their Complaint in the Suffolk Superior Court in the Commonwealth of Massachusetts on February 23, 2023.
3. The Defendant was served with a Summons and copy of the Complaint on May 16, 2023 through its agent for service of process, CT Corporation System. A copy of the Summons and Complaint are attached hereto as **Exhibit A**.

4. Removal is timely because the Defendant has filed this Notice of Removal within thirty (30) days of service of the Summons and Complaint. *See* U.S.C. § 1446(b).
5. Plaintiffs, Alphonse Knight and Olive Knight, aver in the Complaint that they reside at 14 Vera Street, Dorchester, Massachusetts. **Exhibit A**, Complaint ¶¶1-2.
6. Defendant, Toyota Motor Sales, U.S.A., Inc., is a foreign corporation incorporated under the laws of California, with a principal place of business located at 6565 Headquarters Drive, Plano, TX 75024.
7. The citizenship of John Doe Corporation, named as a Defendant in the Plaintiffs' Complaint, is disregarded for the purposes of determining removal based on 28 U.S.C. § 1332(a) and 28 U.S.C. § 1441(b)(1).
8. Accordingly, complete diversity of citizenship exists under 28 U.S.C. § 1332.
9. Upon information and belief, Plaintiffs aver damages above the amount in controversy of \$75,000, exclusive of interest and costs.
10. Plaintiffs allege that on August 17, 2021, Alphonse Knight was operating a 2007 Toyota Avalon when the vehicle was struck from behind by another vehicle as his vehicle was slowing down for a red light. Plaintiffs further allege that the impact caused the 2007 Toyota Avalon to be pushed into an electrical pole. Plaintiffs claim that the airbag did not deploy, and that Mr. Knight sustained serious personal injuries, including the loss of sight in one eye. **Exhibit A**, Complaint, ¶¶8-12. Plaintiff, Alphonse Knight, alleges claims against TMS for Breach of Implied Warranty of Merchantability (Count II), Design Defect (Count IV), Negligence (Count VII [sic]), Failure to Warn (Count IX[sic]), and Breach of

Implied Warranty of Fitness for a Particular Purpose (Count XII[sic]). **Exhibit A**, Complaint.

11. Plaintiff, Olive Knight, alleges a claim against TMS for Loss of Consortium (Count XI).

Exhibit A, Complaint.

12. Plaintiffs demand damages in excess of \$190,000 for medical expenses, lost wages, lost earning capacity, and property damage. **Exhibit A**, Civil Action Cover Sheet.

13. Federal jurisdiction exists pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the Plaintiffs and TMS, Plaintiffs allege damages in excess of the \$75,000 amount in controversy requirement, and TMS is not a citizen of Massachusetts.

14. A copy of this Notice of Removal will be filed with the Clerk of the Suffolk Superior Court and served on counsel of record for Plaintiffs pursuant to 28 U.S.C. § 1446(d). **Exhibit B**, State Court Notice of Removal.

15. Copies of all process, pleadings, and orders received by TMS are attached hereto as **Exhibit A**.

16. TMS is the only properly named defendant in this action and consents to the removal of the action.

17. By removing this action, TMS does not waive any defenses available to it in federal or state court, and expressly reserves the right to assert all such defenses in any responsive pleading.

18. By removing this action from the Suffolk Superior Court, Commonwealth of Massachusetts, TMS does not admit any of the allegations in Plaintiffs' Complaint. Nothing in this Notice of Removal shall be construed as an admission that Plaintiffs' allegations are sufficient to state a claim or have any substantive merit.

WHEREFORE, the Defendant, Toyota Motor Sales, U.S.A., Inc., respectfully requests removal of the above-captioned matter from the Suffolk County Superior Court, Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts.

DATED: May 31, 2023

Respectfully Submitted,

The Defendant
TOYOTA MOTOR SALES, U.S.A., INC.
By its Attorneys,

CAMPBELL CONROY & O'NEIL, P.C.

/s/ Michelle I. Schaffer

Michelle I. Schaffer, BBO #552383

mschaffer@campbell-trial-lawyers.com

Michelle M. Byers, BBO #684836

mbyers@campbell-trial-lawyers.com

20 City Square, Suite 300

Boston, MA 02129

T: (617) 241-3000

CERTIFICATE OF SERVICE

I, Michelle I. Schaffer, counsel for the defendant, Toyota Motor Sales, U.S.A, Inc., hereby certify that on this 31st day of May 2023, a copy of the foregoing, *Notice of Removal*, was filed with the Clerk of the Court using the Court's electronic filing system (ECF), which will send notification of such filing to all counsel of record. The foregoing document is also available for viewing and/or downloading from ECF. Said document was also sent via U.S. First Class Mail and Electronic Mail to the following counsel of record:

Michael M. Kaplan, Esq.
Law Offices of Michael M. Kaplan
The Alexander Garrett Building
291 Main Street
Milford, MA 01757
mike@kaplanslaw.com

/s/ Michelle I. Schaffer

Michelle I. Schaffer